The Planning Inspectorate

Appeal Decision

Site Visit made on 27 April 2021

by Ian Radcliffe BSc(Hons) MRTPI MCIEH DMS

an Inspector appointed by the Secretary of State

Decision date: 15 June 2021

Appeal Ref: APP/Q3060/W/20/3264833
Site of The Dunkirk Inn, 71 Montpelier Road, Nottingham NG7 2JY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr G White of PFHD (Nottingham) Ltd against the decision of Nottingham City Council.
- The application Ref 20/00434/PFUL3 (PP-08520310), dated 18 February 2020, was refused by notice dated 28 October 2020.
- The development proposed is a three storey development comprising 4 No. apartments to existing apartment development.

Decision

1. The appeal is dismissed.

Main Issue

2. Following an application in 2017 permission was granted for the erection of an apartment building containing 13 units and 2 x 3 bedroom houses on the appeal site. Since then the apartment building, with the 12 x 2 bedroom and 1 x 1 bedroom units it contains, has been built but the houses have not. The application which is the subject of the appeal seeks permission to build 4 x 2 bedroom apartments in place of the 2 houses.

3. On the basis of the Council's reason for refusal, the main issue in this appeal is whether the proposed development would contribute to a mix of housing types and sizes that would assist in the creation of a sustainable, inclusive and mixed community.

Reasons

4. The development plan includes the Greater Nottingham Aligned Core Strategies (Part 1 Local Plan) (ACS) and the Nottingham City Land and Planning Policies Development Plan Document (Local Plan Part 2) (LAPP). The ACS sets the strategic policies for Greater Nottingham and the LAPP provides more detail as to how these strategic policies will be implemented in the city.

5. The appeal site is in a location with good access to services and facilities by sustainable forms of transport. It is common ground that it is suitable in principle for residential development.

6. Policy 8 of the ACS outlines the general approach to housing development in the city. It states that there should be an emphasis on providing family housing and that an appropriate mix of housing will be informed by a range of factors. This includes, amongst other considerations, local demography, the Council's strategies in relation to housing and sustainable communities and the need to redress the housing mix in areas with a high concentration of Houses in Multiple Occupation (HMOs) and students. The justified reasoning to the

policy explains that the increase in family housing is sought because Nottingham has a lower percentage of such housing when compared to neighbouring local authorities and nationally, and that this has contributed to a loss of families from the city and an imbalance in communities.

7. The Council states that following extensive pre-application discussions, which included the housing mix on the site, this resulted in the approval of an appropriately balanced scheme that provided a good mix of unit type and, importantly, included family housing.

8. Since the approval of that scheme the LAPP has been adopted. It provides more detail as to how the strategic policies of the ACS are to be implemented and includes a definition of family housing. Policy HO1 of the LAPP relates to housing mix. The most recent figures cited in the LAPP show that the number of completed family homes in Nottingham remains considerably below the levels of such housing found in the wider area and nationally, and below the target the Council set for itself in 2009[1]. As a result, this policy encourages the development of family housing on residential sites.

9. The justified reasoning for policy HO1 defines family housing as having private enclosed gardens and three or more bedrooms. The pair of houses in the extant scheme comply with this definition. However, as the four apartments in the appeal scheme, in keeping with all but one of the units in the apartment building, have only two bedrooms and are served by a communal garden they do not constitute family housing.

10. The local area is characterised by two storey terraced houses. Owing though to its proximity to Nottingham University and Queens Medical Centre over 40% of households locally, and thus many of the terraced houses, are occupied as HMOs and by students. In development plan policy terms, 10% of such housing in an area is considered to be the threshold above which an area starts to become unbalanced. As a result, in order to help create a sustainable, inclusive and mixed community and accord with the development plan, new residential development in the area needs to address this imbalance. Whilst the proposed apartments will not add to the number of HMOs locally, and will not necessarily be occupied by students, by not constituting family housing, of which there is shortfall across the city, it will undermine the efforts of the development plan to create a mixed, balanced community.

11. The view of the appellant is that these policies seek to control who lives where on the basis of their status and so are prejudicial and beyond the scope of planning. However, it is the role of the development plan process, rather than the function of a section 78 appeal, to decide whether plans and their policies accord with legal requirements and are 'sound'. Both parts of the Local Plan were examined and found to be 'sound' prior to adoption. Amongst other matters, to be found 'sound' plans must be justified and consistent with national policy.

12. Whilst there may be market demand for the 2 bedroom apartments proposed no marketing evidence has been provided to demonstrate that there is no market interest in family housing on the site, or that, in comparison to the rest of the city, there is a lack of need for such housing in the area.

[1] Paragraph 3.8.4 of the ACS refers to the target in Nottingham's Sustainable Community Strategy 2009 of 60% of new dwellings built outside of the City Centre having 3 or more bedrooms in order to deliver more family housing.

13. No substantive evidence has been provided in relation to the site which demonstrates that those criteria of policy HO1.2 which support alternatives to family housing have been met. In terms of this policy, the site is suitable and capable of accommodating family housing. As granting permission for the four proposed apartments would discourage the development of the two family houses under the extant permission, the appeal proposal would be contrary to policy HO1 of the LAPP.

14. Reference has been made to policy HO2 of the LAPP which seeks to prevent the loss of dwellinghouses suitable for family occupation. However, as the family houses, for which permission exists, have not yet been built this policy is not applicable.

15. Taking all these matters into account, the proposal would therefore fail to contribute towards creating a sustainable, inclusive and mixed community and would be contrary to policy 8 of the ACS, policy HO1 of the LAPP and the development plan considered as a whole. As a consequence, it would also be contrary to policy A of the ACS as it would not constitute a sustainable development.

Other matters

16. The Design and Access Statement is of the opinion that the houses would provide living conditions that would be unattractive to future occupiers. The Council though in deciding to grant planning permission for the redevelopment of the site determined that acceptable conditions would be provided in this regard. On the basis of the room sizes and garden areas in the approved plans, what I have seen of the relationship of the site to the apartment block, and the inclusion of a condition to the permission allowing the Council to ensure that the obscure glazing to the windows that overlook the rear gardens of the proposed houses is installed, I agree with the Council's assessment. As a result, I attach little weight to this consideration in favour of the appeal.

17. The construction of the apartment building has incurred unanticipated costs. However, it is normal practice for contingency sums to be included to cover such matters and the rate of developer return in housing schemes reflects such risks and is used to absorb them. In the absence of substantive evidence on this matter, I am therefore not persuaded that it would not be possible to build the pair of houses for which permission has been granted. As a result, in order to realise the value of the site it is reasonable to assume that the houses would be built if this appeal was dismissed.

18. The vacant and neatly boarded nature of that part of the site on Montpelier Road where the four flats would be built has a neutral rather than a harmful effect on the streetscene. Moreover, use of statutory powers by the Council can prevent it becoming unsightly over time. As a result, the effect of this land on the character and appearance of the area is not a consideration of material weight in favour of the appeal.

19. There is no other harm that the Council alleges the proposed development would cause. It would make a positive contribution to the streetscene in a similar manner to the extant permission, parking spaces would be allocated for future occupiers and the living conditions of neighbours would not be adversely affected. However, the absence of harm is a matter of neutral rather than positive weight in favour of a proposal.

20. Reference has been made to the four apartments helping meet the needs of different housing groups in terms of housing type and size. Given that the scheme would result in more housing of a similar type and size already provided on the site, and the policy emphasis on family housing, of which there is a significant undersupply in the city, the additional housing proposed would undermine rather than improve the housing mix sought.

21. The other matters considered above, and the additional considerations from the National Planning Policy Framework put forward in favour of the proposal, which include that it would boost the supply of housing to a greater degree than the extant permission and make more efficient use of previously developed land, are insufficient to outweigh the harm that would be caused and the scheme's non-compliance with the development plan. Material considerations therefore do not indicate that the proposal should be determined other than in accordance with the development plan.

Conclusion

22. For the reasons set out above, I therefore conclude that the appeal should be dismissed.

Ian Radcliffe

INSPECTOR